



Date: January 19, 2017

To: Colorado Transportation Commission / High Performance Transportation Enterprise Board

From: Nicholas Farber, HPTE Operations Manager; Brent Butzin, HPTE General Counsel

Subject: Direct Agreement between CDOT, HPTE and TIFIA regarding the C-470 Express Lanes Project

Purpose

The purpose of this memo is to summarize the Direct Agreement between CDOT, HPTE and TIFIA regarding the financing of the C-470 Express Lanes Project (Project).

Action

No action - informational only. HPTE will be back in February to ask for your approval.

Project Background

The C-470 Express Lanes Project (the Project) is located along 12.5 miles of C-470, between Interstate 25 (I-25) and Wadsworth Boulevard. The Project includes reconstructing existing pavement, adding auxiliary lanes, improving on and off ramps as well as the construction of new express lanes both westbound and eastbound. The total cost of the Project is \$345 million. \$39 million is being contributed between CDOT and local stakeholders and HPTE will borrow the remainder of the Project cost through a TIFIA loan and toll revenue backed bonds.

Direct Agreement Details

Recently on projects that involve HPTE, Intra-Agency Agreements (IAAs) document the substantive terms of how CDOT and HPTE work together and allocate rights and responsibilities on shared projects. However, since HPTE is entering into a TIFIA Loan on this Project, but does not have the responsibility to either construct the Project or operate or maintain the Project, TIFIA has insisted that CDOT enter into a Direct Agreement with them and HPTE.

The Direct Agreement requires CDOT to covenant to certain provisions in the TIFIA Loan, e.g. operations and maintenance responsibilities (in accordance with the requirements of the Annual Engineer's Report and the annual Finance Plan), construction of the project, maintain insurance, and OFAC compliance (Office of Foreign Asset Control). Other key provisions are if CDOT fails to substantially complete the Project it will constitute a Development Default under the TIFIA Loan; if CDOT fails to require its contractors to maintain insurance it is an Event of Default under the loan; that CDOT cannot change the fundamental nature of the Project, namely remove the tolled express lanes; and that CDOT cannot accept payments on O&M Backup Loans from HPTE unless HPTE has first paid all TIFIA debt service that is due and payable at that time. CDOT's key obligations to TIFIA are already obligations CDOT has to HPTE under the IAA; this merely gives TIFIA direct contractual privity and the ability to enforce certain rights against CDOT.

Next Steps

HPTE will go back to TIFIA with suggested edits as the document does not fully comply with Colorado Law and will present it to you in February for approval along with an amended HPTE/CDOT IAA.

Attachments

Attachment: C-470 Express Lanes Direct Agreement between CDOT, HPTE and TIFIA.